IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1258 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAFIKMIYA AHMEDMIYA MALEK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1258 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/08/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short hereinafter), District Magistrate, Anand, vide order dated January 20, 2001, Annexure A to the petition, detained the petitioner -

detenu.

2. From the averments made in the petition and the grounds of detention, it is clear that the detaining authority considered the petitioner as a bootlegger within the meaning of section 2 (b) of the Act and since five cases under the Prohibition Act are registered against him and are pending in which statements of four witnesses were recorded, according to the detaining authority, the activities of the petitioner are detrimental to the public order and, therefore, powers under Section 9 (2) of the Act were exercised by him for detaining the petitioner - detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Prajapati, learned advocate for the petitioner, has restricted his arguments to the point that non-supply of legible copies of the documents relied upon by the detaining authority while recording the order of detention has seriously prejudiced the right of the petitioner of making an effective representation to the concerned authority and on this ground alone, according to the learned advocate for the petitioner, the petition deserves to be allowed. He, therefore, urged to allow the petition and prayed to set the petitioner at liberty forthwith.

5. Mr. K.T. Dave, learned AGP who appears on behalf of the respondents has not disputed the fact that some of the pages of the documents supplied to the petitioner by the detaining authority are illegible. He, therefore, urged to pass appropriate order in light of the settled principles of law enunciated by this Court.

6. Similar question arose before this Court in the case of Vikramsinh Pravinsinh Rana v. State of Gujarat and another, 1988 (2) GLH 414. In that case some of the pages of the judgment supplied to the detenu were not legible and the Division Bench of this Court held that it would amount to non-communication of the grounds and it also adversely affected the right of the petitioner's making representation to the concerned authority and, therefore, the order of detention was quashed and set aside. Applying the said principles to the facts of the

present case, at the cost of repetition, be it stated that some of the pages of the documents supplied to the detenu by the detaining authority are illegible and, therefore, it can be said that non-supply of legible copies of the documents has seriously prejudiced the petitioner's right of making an effective representation to the concerned authority and on this ground alone the order of detention stands vitiated and the petition deserves to be allowed.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated 20.1.2001 passed against the petitioner detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

28.8.2001. (A.M. Kapadia, J.)

(karan)